

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1040

Introduced by Fredrickson, 20.

Read first time January 08, 2024

Committee:

- 1 A BILL FOR AN ACT relating to income taxes; to amend section 77-27,241,
- 2 Revised Statutes Supplement, 2023; to change provisions relating to
- 3 tax credits for food donations; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 77-27,241, Revised Statutes Supplement, 2023, is
2 amended to read:

3 77-27,241 (1) For purposes of this section:

4 (a) Agricultural producer means an individual or entity whose income
5 is primarily attributable to crop or livestock production in the State of
6 Nebraska;

7 (b) Department means the Department of Revenue;

8 (c) Food bank means an organization in this state that:

9 (i) Is exempt from federal income taxation under section 501(c)(3)
10 of the Internal Revenue Code of 1986, as amended; and

11 (ii) Distributes food in ten or more counties in Nebraska and
12 qualifies for the Emergency Food Assistance Program administered by the
13 United States Department of Agriculture;

14 (d) Food pantry means an organization in this state that:

15 (i) Is exempt from federal income taxation under section 501(c)(3)
16 of the Internal Revenue Code of 1986, as amended; and

17 (ii) Distributes emergency food supplies to low-income individuals
18 in this state who would otherwise not have access to such food supplies;

19 (e) Food rescue means an organization in this state that:

20 (i) Is exempt from federal income taxation under section 501(c)(3)
21 of the Internal Revenue Code of 1986, as amended; and

22 (ii) Accepts donations of food and delivers such food to food banks
23 or food pantries so that such food may be distributed to low-income
24 individuals in this state;

25 (f) Grocery store retailer means a retailer located in this state
26 that is primarily engaged in business activities classified as code
27 445110 under the North American Industry Classification System;

28 (g) Qualifying agricultural food donation means a donation made by
29 an agricultural producer to a food bank, food pantry, or food rescue of
30 fresh or frozen fruits, vegetables, eggs, dairy products, or meat
31 products grown or produced in the State of Nebraska which meets all

1 applicable quality and labeling standards, along with any other
2 applicable requirements of the food bank, food pantry, or food rescue to
3 which the qualifying agricultural food donation is made; and

4 (h) Restaurant means a business located in this state that is
5 primarily engaged in business activities classified as code 722511,
6 722513, 722514, or 722515 under the North American Industry
7 Classification System.

8 (2) For taxable years beginning or deemed to begin on or after
9 January 1, 2024, under the Internal Revenue Code of 1986, as amended, a
10 credit against the income tax imposed by the Nebraska Revenue Act of 1967
11 shall be allowed to:

12 (a) Any grocery store retailer or restaurant that donates food to a
13 food bank, food pantry, or food rescue during the taxable year; and

14 (b) Any agricultural producer that makes a qualifying agricultural
15 food donation to a food bank, food pantry, or food rescue during the
16 taxable year.

17 (3) Subject to subsection (7) of this section, the credit provided
18 in this section shall be a nonrefundable credit in an amount equal to
19 fifty percent of the value of the food donations or qualifying
20 agricultural food donations made during the taxable year, not to exceed
21 two thousand five hundred dollars. Any amount of the credit that the
22 taxpayer is prohibited from claiming in a taxable year may be carried
23 forward to any of the three subsequent taxable years.

24 (4) For purposes of this section, food donated by a grocery store
25 retailer or restaurant shall be valued at its wholesale value. A
26 qualifying agricultural food donation shall be valued at the prevailing
27 market value of the product at the time of donation, plus the direct cost
28 incurred by the agricultural producer for processing the product.

29 (5) To receive a credit under this section, a taxpayer shall submit
30 an application to the department in a form and manner prescribed by the
31 department. The application shall include the amount of food donated

1 during the taxable year and any other information required by the
2 department.

3 (6) If the department determines that an application is complete and
4 that the taxpayer qualifies for credits, the department shall approve the
5 application within the limits set forth in this section and shall certify
6 the amount of credits approved to the taxpayer.

7 (7) The department may approve up to one million zero dollars of
8 credits each year. If the amount of credits requested by qualified
9 taxpayers in any year exceeds such limit, the department shall allocate
10 credits proportionally based on the amounts requested so that the limit
11 is not exceeded.

12 (8) A taxpayer shall claim the credit by attaching the tax credit
13 certification received from the department under subsection (6) of this
14 section to the taxpayer's tax return.

15 (9) Any amount relating to such food donations or qualifying
16 agricultural food donations that was deducted as a charitable
17 contribution on the taxpayer's federal income tax return ~~subtracted from~~
18 ~~the taxpayer's federal adjusted gross income or federal taxable income~~
19 must be added back in the determination of Nebraska ~~adjusted gross income~~
20 ~~or~~ taxable income before the credit provided in this section may be
21 claimed.

22 (10) No credit granted under this section shall be transferred,
23 sold, or assigned. No taxpayer shall be eligible to receive a credit
24 under this section if such taxpayer employs persons who are not
25 authorized to work in the United States under federal law. No taxpayer
26 shall be able to claim more than one credit under this section for a
27 single donation.

28 (11) A food bank, food pantry, or food rescue may accept or reject
29 any food donated under this section for any reason. Any food that is
30 rejected shall not qualify for a credit under this section.

31 (12) The department may adopt and promulgate rules and regulations

1 to carry out this section.

2 Sec. 2. Original section 77-27,241, Revised Statutes Supplement,
3 2023, is repealed.